**Assembly Bill No. 541**

CHAPTER 424

An act to add Article 2.6 (commencing with Section 52300) to Chapter 2 of Division 18 of the Food and Agricultural Code, relating to liability.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

LEGISLATIVE COUNSEL'S DIGEST

AB 541, Huffman. Liability: genetically engineered plants.

Existing law provides that everyone is generally responsible, not only for the result of his or her willful acts, but also for an injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself or herself.

This bill would provide a protocol for obtaining and testing a crop sample to determine whether a contract has been breached or a patent on a genetically engineered plant has been infringed by a farmer who is planting, managing, or harvesting a crop, as specified. The bill would provide for agreed or court-ordered sampling, with provisions relating to notice to the parties of sampling and results, protective orders against intentional destruction or damage to crops, and fees for sampling by or under agreement with the Secretary of Food and Agriculture. The bill would provide that a farmer is not liable based on the presence or possession of a patented genetically engineered plant when the farmer did not knowingly buy or otherwise knowingly acquire the genetically engineered plant, acted in good faith and without knowledge of the genetically engineered nature of the plant, and when the genetically engineered plant is detected at a de minimis level, as specified. This bill would limit the applicability of its liability provision, as specified. This bill would state the intent of the Legislature, as specified, in enacting this act.

*The people of the State of California do enact as follows:*

SECTION 1. Article 2.6 (commencing with Section 52300) is added to Chapter 2 of Division 18 of the Food and Agricultural Code, to read:

Article 2.6. Genetically Engineered Plants

52300. For purposes of this article only, the following definitions apply:

(a) "Farmer" means the person responsible for planting a crop, managing the crop, and harvesting the crop from land on which a breach of contract or patent infringement is alleged to have occurred.

(b) "Genetically engineered plant" means a plant or any plant part or material, including, but not limited to, seeds and pollen, in which the genetic material has been changed through modern biotechnology in a way that does not occur naturally by multiplication or natural recombination.

(c) "Modern biotechnology" means the application of either of the following:

(1) In vitro nucleic acid techniques, including recombinant deoxyribonucleic acid (DNA) and direct injection of nucleic acid into cells or organelles.

(2) Fusion of cells beyond the taxonomic family that overcome natural physiological reproductive or recombinant barriers and that are not techniques used in traditional breeding and selection.

52301. (a) Before a person or his or her agent holding a patent on a genetically engineered plant, may enter upon any land farmed by another for the purpose of obtaining crop samples to determine whether breach of contract or patent infringement has occurred, the person holding the patent or his or her agent shall do all of the following:

(1) Notify the farmer in writing of the allegation that breach of contract or patent infringement has occurred and request permission to enter upon the farmer's land.

(2) Provide a copy of that notification to the secretary.

(3) Obtain the written permission of the farmer.

(4) Provide notice to the farmer of the following procedures which shall be applicable as provided:

(A) If the farmer withholds permission, the person holding a patent may petition the superior court in the county in which the alleged breach of contract or patent infringement has occurred for an order granting permission to enter upon the farmer's land.

(B) If the person holding a patent believes that the crop from which samples are to be taken may be subject to intentional damage or destruction, the person may seek a protective order from the superior court. The protective order shall be crafted to minimize interruption or interference with normal farming practices, including harvest and tillage.

(C) The procedures described in Section 52302.

(b) The farmer shall grant or deny access in writing within 10 days of receipt of a request to enter the land pursuant to subdivision (a).

52302. If requested by either party, the secretary or his or her designee shall be present for the sampling, provide for the collection of samples, or conduct any other aspect of the sampling or analysis process as requested. The secretary shall designate an employee or enter into an agreement with an employee or agent of the State of California or a third party unaffiliated with either party to carry out the specified sampling activity as provided in regulations adopted pursuant to Article 2 (commencing with Section 52251) of Division 18. The patentholder shall pay the fee charged by the department

under regulations adopted pursuant to that article. The farmer or the agent of the farmer and the person holding the patent may be present at any collection of samples conducted pursuant to this article, and each shall be notified of the time and location of the sample taking at least 24 hours in advance.

52303. Samples for analysis may be taken from a standing crop, from representative standing plants in the field, or from crop residue remaining in the field after harvest.

52304. The results of any testing conducted pursuant to this article shall be sent by registered letter by the testing party to all parties involved in the investigation within 30 days after the results are reported from the testing laboratory.

52305. A farmer shall not be liable based on the presence or possession of a patented genetically engineered plant on real property owned or occupied by the farmer when the farmer did not knowingly buy or otherwise knowingly acquire the genetically engineered plant, the farmer acted in good faith and without knowledge of the genetically engineered nature of the plant, and when the genetically engineered plant is detected at a de minimis level. The authority of a court to determine the presence of de minimis levels of a genetically engineered plant is intended solely for the purpose of assisting in adjudicating claims relating to the possession or use of a patented genetically engineered plant in which the seed labeler, patentholder, or licensee, has rights. Nothing in this section is intended to do any of the following:

(a) Establish, or be used as the basis for establishing, an acceptable level at which a patented genetically engineered plant may be present.

(b) Be used to alter or limit liabilities or remedies for personal injury or wrongful death.

(c) Be used outside or beyond the scope or context of a legal dispute regarding genetically engineered plants.

52306. The provisions of this part are severable. If any provision of this part or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 2. It is the intent of the Legislature to clarify, as needed, the role and responsibility of the Department of Food and Agriculture in the oversight of regulated agricultural biotechnology.

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